



2025:DHC:882



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 24<sup>th</sup> January, 2025*

+ **C.R.P. 120/2022, CM APPL. 36778/2022, CM APPL. 36779/2022 & CM APPL. 42906/2022**

KISHAN LAL BHANDULA .....Petitioner  
Through: Mr. Rishabh Kapur, Adv.  
along with petitioner in  
person.

versus

SUSHIL BHANDULA .....Respondent  
Through: Mr. J.C. Mahindro, Adv.  
through V.C.

**CORAM:**  
**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**AMIT MAHAJAN, J.**

**C.R.P. 120/2022 & CM APPL. 36779/2022**

1. CM APPL. 36779/2022 is filed under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 1327 days in filing the accompanying petition against the order dated 01.10.2018 (hereafter '**impugned order**') passed by the learned Additional District Judge ('**ADJ**'), Tis Hazari Courts, Delhi in CS No. 17126/2016.

2. By impugned order, the learned ADJ allowed the suit filed by the respondent/plaintiff and decreed the recovery of possession in favour of the respondent/plaintiff in respect of the suit property being 2 rooms on 1<sup>st</sup> floor, XI/3699-3701, Netaji Subhash Marg, Darya Ganj, New Delhi admeasuring 485.22



square feet.

3. It is stated that parties are real brothers. The learned counsel for the applicant, while making an effort to justify the delay, submits that soon after the passing of the impugned order, the mother of the parties passed away on 30.12.2018. He submits that during the course of the funeral rituals, the parties decided that they would make an endeavour to settle the disputes *inter se*.

4. He submits that the respondent, however, on 02.02.2019 filed execution proceedings against the impugned order, and the same is pending adjudication. He submits that thereafter during the proceedings emanating from the execution petition, on 23.01.2020, the sister of the parties also filed objections. He submits that thereafter, the accompanying petition could not be filed due to the onset of COVID-19.

5. He further submits that the applicant's sister also subsequently filed a suit for declaration, cancellation of gift deed, partition and permanent injunction in respect of the suit property. He consequently submits that due to wrong legal advice, the applicant could not file the accompanying petition within the prescribed period of limitation.

6. Besides the aforementioned averments, no other ground has been raised which is/or, for the matter, can be said to be material or of any importance in the said application for the purpose of adjudication thereof.

7. At the outset, it is pertinent to mention that the impugned order was passed way back on 01.10.2018. It is stated that soon



after the passing of the impugned order, the mother of the parties expired on 30.12.2018. It has further been stated that soon thereafter, the parties were in the midst of making an endeavour to settle their disputes *inter se*. As per the case of the applicant, the respondent had subsequently filed execution proceedings against the impugned order to which the applicant's sister had also filed objections.

8. Even if the case of the applicant is taken at the highest, and it is accepted that the applicant could not file the accompanying petition on the ground of the ongoing efforts of settlement between the parties, yet, it is apparent that the respondent had filed the execution proceedings in respect of the impugned order way back on 02.02.2019.

9. It has further been contended that the petition could not be filed on an earlier occasion due to the wrong advice of the previous counsel. Even if it is assumed that the applicant had been misled, a delay of 1327 days is not reasonable. The parties must remain proactive and vigilant while pursuing their rights and remedies, and cannot be allowed to neglect their rights for several years and suddenly file a petition.

10. It has been observed in a number of cases that the petitions are filed belatedly and the blame is put on the counsel for not taking appropriate steps or not giving proper advice. If such arguments are accepted by the Courts, it would only tantamount to opening a floodgate of litigations, where petitions could be filed even after decades on the premise of ill advice or



inappropriate steps by the counsel.

11. It is well settled that while dealing with an application for condonation of delay under the Limitation Act, 1963 or any other similar statute, a liberal and justice-oriented approach must be adopted by the Courts, when ‘sufficient cause’ had been shown by the applicant for not having filed the appeal within the period prescribed. In the present case, the explanations rendered in the application do not constitute sufficient cause for condoning the delay of 1327 days delay in filing the present petition, rather it reflects the negligence on part of the applicant/ petitioner.

12. In *Pathapati Subba Reddy v. LAO* : 2024 SCC OnLine SC 513, the Hon’ble Apex Court held that if applications for condoning inordinate delay are allowed, there would be no finality to the proceedings and litigations will be made immortal. The Hon’ble Court noted that the power to condone delay is discretionary in nature, and may not be exercised even in cases where sufficient cause is explained by the applicant and emphasised the need to draw an equilibrium between adopting a liberal approach and in implementing the statute of limitation, as it stands. The relevant portion of the judgement reads as under:

*“7.The law of limitation is founded on public policy. It is enshrined in the legal maxim “interest reipublicae ut sit finis litium” i.e. it is for the general welfare that a period of limitation be put to litigation. **The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely.** Even public policy requires that there should be an end to the litigation otherwise it would be a dichotomy if the litigation is made immortal vis-a-vis the litigating parties i.e. human beings, who are mortals.*

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12. In view of the above provision, the appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word 'shall' in the aforesaid provision connotes that the dismissal is mandatory subject to the exceptions. Section 3 of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. In other words, it casts an obligation upon the court to dismiss an appeal which is presented beyond limitation. This is the general law of limitation. The exceptions are carved out under Sections 4 to 24 (inclusive) of the Limitation Act but we are concerned only with the exception contained in Section 5 which empowers the courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives 'sufficient cause' for not preferring the appeal within the period prescribed. In other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish 'sufficient cause' for not filing it within time. The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised even if sufficient cause is shown based upon host of other factors such as negligence, failure to exercise due diligence etc.

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16. Generally, the courts have adopted a very liberal approach in construing the phrase 'sufficient cause' used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice. In Collector, Land Acquisition, Anantnag and Ors. vs. Katiji and Ors.2, this Court in advocating the liberal approach in condoning the delay for 'sufficient cause' held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of 'sufficient cause' for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases 'liberal approach', 'justice-oriented approach' and cause for the advancement of 'substantial justice' cannot be employed to defeat the law of



**limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act.”**

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23. In *Basawaraj and Anr. vs. Special Land Acquisition Officer*, this Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression ‘sufficient cause’ as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large. **It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.**

*(emphasis supplied)*

13. In view of the above, this Court finds no ground to condone the delay in filing the accompanying petition. The application is therefore dismissed.

14. Consequently, the petition is dismissed on the ground of being barred by limitation. Pending application(s) also stand disposed of.

**AMIT MAHAJAN, J**

**JANUARY 24, 2025**